

Guidelines for Death Penalty Cases¹

I. Duties of Clerk's Office

- A. Immediately upon the filing of a death penalty case, the following individuals will be notified:
- The chief deputy clerk, who will provide the judge assignments (see ¶1B). If the chief deputy clerk is unavailable, any of the following individuals can make the assignment: the clerk; the clerk's administrative assistant; the deputy clerk in charge of the Knoxville division.
 - Deputy clerk in charge of the division in which the case has been filed.
 - Death penalty law clerk. If the death penalty law clerk is unavailable, the pro se law clerk in the division will be notified.
 - The chief judge and clerk of the sixth circuit court of appeals.
 - Sixth Circuit staff attorney.
- B. A district and magistrate judge will be assigned to the case. Assignments to death penalty cases will be under a rotation/tracking system approved by the judges, which is separate from the assignment of cases under Local Rule 3.2 (see attached rotation sheet). The assignments will be made district wide and not by divisions. The rotation will include the active district judges and active magistrate judges. No judge is to receive a second assignment until every judge has received one assignment. If the assigned judge will be unavailable for 48 hours, the next available judge in the rotation will act temporarily on matters that need immediate attention. If the assigned magistrate judge is unavailable, the district judge may assign another magistrate judge to act temporarily on matters that need immediate attention.
- C. A civil case file will be opened. The case will be given a divisional case number from the assigned district judges' division. If the filing fee is not paid, a miscellaneous case will be opened. If the filing fee is paid, a civil case will be opened. The Sixth Circuit Court of Appeals will be added to the service list in order for that court to receive any and all orders entered at the district court level, and the appeals court will be provided a copy of the docket sheet after the case is opened.

1. The definition of a death penalty case is one in which the warrant of execution has been signed.

- D. At the time of filing, the filing attorney or the pro se petitioner will be provided all necessary forms and materials as set forth in these Guidelines. The packet will include:
- “Procedural Instructions—Death Penalty Habeas Corpus Petitions” (prepared by the Sixth Circuit).
 - “Certificate of Death Penalty Case, U.S. Court of Appeals for the Sixth Circuit.”
 - An application to proceed in forma pauperis and financial affidavit.
 - A transcript order form for the Sixth Circuit Court of Appeals.
- E. As an attorney makes an appearance in the case, he or she will be added to the service list and be sent the materials set forth in No. 4. The State Attorney General’s Office does not need these materials.
- F. When the order is entered staying the execution, a certified copy and a regular copy will be provided to plaintiff’s counsel or the pro se petitioner. Plaintiff’s counsel or the pro se petitioner will serve the certified copy on the Tennessee Supreme Court, and will fax a copy to the prison officials. Plaintiff’s counsel or the pro se petitioner will provide a copy to the state attorney general, who will serve a copy upon the governor and on the prison facility. The clerk of the Sixth Circuit will be notified by phone of a stay of execution. The clerk of the Sixth Circuit will give instructions as to how he or she wishes to receive a copy of the order (regular mail, fax, or E-mail).
- G. If an appeal is filed, the Sixth Circuit will be notified by telephone and a copy faxed to them. If time is short, the Sixth Circuit will be provided with the name of a contact from the district court to notify of their decision. If time is not short, the appeals deputy clerk will expedite the processing of the case.
- H. A death penalty case should NOT be delayed for any reason and should be given priority attention in every manner.

II. Duties of Chambers Staff

[Incorporated into Local Rule 9.4 as Appendix 4]

- A. The pro se law clerk in each division shall act as a liaison between the district judge assigned to the case, the magistrate judge assigned to the case, and the clerk’s office.
- B. After the case has been opened by the clerk’s office, the pro se law clerk will take the file to the assigned district judge, who will:
1. Rule on the application to proceed in forma pauperis, if there is one, and the motion to stay execution and, if granted, do the following;

2. Rule on the motion to appoint counsel, if there is one;
 3. Refer the case to the Magistrate Judge for appointment of counsel, for disposition of all non-dispositive motions, for scheduling of deadlines, for establishment of a litigation budget for payment of investigative, expert, and other reasonably necessary services, and for payment recommendation of attorney and other fees.
 4. If the assigned district judge is to be unavailable for 48 hours, the pro se law clerk will take the file to the next available district judge in order of rotation, who will act temporarily on matters that need immediate attention.
- C. After the district judge's order has been docketed, the pro se law clerk will take the file to the assigned magistrate judge, who will expeditiously:
1. Appoint counsel, establish the amount of compensation and authorize interim vouchers on a monthly basis.
 - a. Counsel will be appointed from the court-approved panel of attorneys in each division of the district.
 - b. Counsel must possess the following qualifications:
 - At least one attorney must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in the court in felony cases. 21 U.S.C. § 848(q)(6).
 - The court may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation. 21 U.S.C. § 848(q)(7).
 - c. Appointed counsel will be compensated, in the court's discretion, at the rate of not more than \$125 per hour. 21 U.S.C. § 848(q)(10)(A). The rate of compensation to be paid associates and paralegals shall be addressed at the first status conference to be held in the case.
 - d. Interim vouchers must be submitted on a monthly basis, with the vouchers due on or before the 10th of each month. The magistrate judge shall review all interim vouchers before the vouchers are presented to the district judge.
 - Interim vouchers must be on an interim CJA Form 30, "Death Penalty Proceedings: Appointment of and Authority to Pay Court Appointed Counsel." Each voucher shall be numbered in series and include the time period covered by the voucher.
 - Attorneys' fees and reimbursable expenses through the last day of the previous month shall be claimed on each interim voucher. The first interim voucher submitted shall reflect all attorneys' fees and reimbursable expenses incurred from the date of appointment. In the event there are no

fees or expenses incurred for any given month, counsel shall file with the Clerk a statement to that effect on the form provided herein.

- All interim vouchers shall be supported by detailed and itemized time and expense statements. Chapter VI, as well as the applicable provisions of Chapter II, Part C of the Guidelines for the Administration of the Criminal Justice Act, outlines the procedures and rules for claims by CJA attorneys and should be followed regarding each voucher.
 - At the conclusion of the representation, counsel shall submit a final voucher seeking payment for representation provided during the final interim period. The final voucher shall also set forth in detail the time and expenses claimed for the entire case, including all documentation. Counsel shall reflect all compensation and reimbursement previously received on the appropriate line of the final voucher.
- e. Counsel may be reimbursed for out-of-pocket expenses reasonably incurred incident to the representation. Counsel should incur no single expense item in excess of \$500.00 without prior approval of the court. Such approval may be sought by filing an application with the clerk stating the nature of the expense, the estimated dollar cost and the reason the expense is necessary to the representation.
- Recurring expenses, such as telephone toll calls, photocopying and photographs, which aggregate more than \$500.00 on one or more interim vouchers are not considered single expenses requiring court approval.
 - Telephone toll calls, telegrams, photocopying, and photographs can all be reimbursable expenses if reasonably incurred. General office overhead, such as rent, secretarial help, and telephone service, is not a reimbursable expense, nor are items of a personal nature. Expenses for service of subpoenas on fact witnesses are not reimbursable, but rather are governed by Fed. R. Crim. P. 17 and 28 U.S.C. § 1825.
 - Travel by privately owned automobile should be claimed at the government approved rate, plus parking fees, ferry fares, and bridge, road and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis. Air travel in “first class” is prohibited.
 - With respect to travel outside the attorney’s county of practice, the \$500.00 rule should be applied in the following manner: if travel expenses, such as air fare, mileage, parking fees, meals and lodging will aggregate an amount in excess of \$500.00, the travel should receive prior court approval.
 - Actual expenses incurred for meals and lodging while traveling outside the attorney’s county of practice must conform to the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations.

- f. The Federal Defender will usually be appointed as co-counsel unless that office has a conflict or other good cause is shown why the Federal Defender should not be appointed.
2. Schedule a status conference with petitioner's counsel and the Attorney General for the State of Tennessee for establishing deadlines and a litigation budget for payment of investigative, expert, and other reasonably necessary services.
 - a. Fees and expenses for investigative, expert and other reasonably necessary services shall not exceed \$7,500, unless payment in excess of that limit is certified by the court as necessary and the amount of the excess payment is approved by the chief judge of the circuit. 21 U.S.C. § 848(q)(10)(B).
 - b. No ex parte proceeding, communication, or request pertaining to fees and expenses for investigative, expert and other reasonably necessary services will be considered unless a proper showing is made concerning the need for confidentiality. 21 U.S.C. § 848(q)(9).
- D. At the status conference, the magistrate judge will establish the following:
 1. The deadlines for filing the habeas corpus petition, or an amendment to the petition if a petition has already been filed, the response to the habeas corpus petition, and petitioner's traverse.
 2. The deadlines for filing a dispositive motion and the response to the motion.
 3. The deadlines for filing the parties' witnesses and exhibits lists.
 4. The magistrate judge shall also establish a tentative date for an evidentiary hearing with the district judge.
- E. The magistrate judge will rule on all non-dispositive motions and discovery disputes
 1. As soon as they are filed, the pro se law clerk will take all non-dispositive motions and discovery disputes to the magistrate judge.
 2. The parties may appeal a ruling of the magistrate judge to the district judge by filing objections within ten (10) days of service of the magistrate judge's order. Fed. R. Civ. P. 72(a).
- F. The district judge to whom the case is assigned shall conduct the evidentiary hearing
- G. The district judge to whom the case is assigned shall have the authority to vary these procedures as necessary in his discretion